

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 383 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO.

2. To be referred to the Reporter or not? NO.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge?
NO.

STATE OF GUJARAT

Versus

KISHOR NANDLAL MASRANI

Appearance:

MR AJ DESAI, APP for Petitioner

MR DM THAKKAR for Respondent No. 1

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal against the judgment and order passed by learned Judicial Magistrate First Class, Savarkundla, in Criminal Case No.937/87 before him on 21-3-91, acquitting the present respondent of the charge under Section 7 of the Prevention of Food Adulteration Act, 1955 (" the Act" for short).

2. The Food Inspector Shri Ambalal Khodidas Patel of Bhavnagar was working as such at Bhavnagar. Savarkundla fell within his jurisdiction, and therefore, on 27-5-87, he visited Kishor Kirana Bhandar, situated near bus-stand of Savarkundla. At that time Kishorkumar Nandlal Masrani was present there. The said Kishor Kirana Bhandar is a grossary shop. The Food Inspector kept present the panch witness Sureshkumar Narsinh Nagrecha along with him and gave his introduction and informed the respondent that he had come to inspect the shop under the provisions of the Act. At the time of inspection, in the shop there was 6 k.g. pure ghee in a aluminium jar which was meant for sale. The complainant therefore, purchased 450 grams of that ghee and after adding preservatives, made three samples out of it, sealed them and sent them to the Public Analyst for analysis. The Public Analyst received the samples in a sealed condition, got the same analysed and prepared a report on 26-6-87 wherein he opined that the samples of pure ghee do not conform to the standards prescribed under the provisions of the Act. Thereafter, notice as required under Section 13 (2) of the Act was given to the respondent. In the meantime, complaint was lodged after obtaining sanction for lodging the complaint as required under Section 20 of the Act. At the time of trial, the respondent who was the accused therein pleaded not guilty and faced the trial. The learned Magistrate after considering the evidence on record came to the conclusion that the prosecution failed to establish the guilt of the respondent and acquitted him of the offence that he was charged with.

3. Being aggrieved by the said judgment and order, the State has preferred the present appeal. Mr. Desai, learned A.P.P. has assailed the judgment of the learned Magistrate on the ground that the reasoning adopted by the Magistrate are not correct. The learned Magistrate has substituted his own views against the views expressed by the Public Analyst who is a authority for deciding the question of adulteration and standards as prescribed by

law. It was found from the report of the Public Analyst that the samples of pure ghee were containing colour of turmeric, and therefore, the learned Magistrate has come to the conclusion that turmeric itself is a edible item and there is a possibility that because the respondent is trading in grossary, turmeric powder might have fallen into the jar containing pure ghee. It cannot be considered as an intentional adulteration. Mr. Desai therefore, urged that this appeal may be allowed setting aside the judgment and order of the learned Magistrate and the accused persons be convicted. Mr. Desai submitted that the sanction is held to have been given by the authority without application of mind and the papers are held to have been mechanically screened by him. In fact, the sanction is properly given and there is no reason to doubt the sanction. The appeal may therefore be allowed.

4. While going through the record and proceedings, it is found that the sanction in question was produced on record which speaks of perusal of the report of Public Analyst, Bhuj, Kutch, bearing No.1541/87,dated 26-6-87, whereas if the original report of the Public Analyst is seen, that report is issued not by Public Analyst, Bhuj, Kutch, but it was issued by Public Analyst, Baroda. This is a clear case of non-application of mind as has been observed by the learned Magistrate and the sanction cannot be said to be valid in the eyes of law.

5. Another aspect that requires to be considered is that as per the report of the Public Analyst, Baroda, the sample was received by him on June 2, 1987, the sample was examined on June 4, 1987, the report was signed on 26-6-87. It also transpires that the Public Analyst who signed the report had himself not analysed the sample, but had caused the same to be analysed. The outcome of this is that the sample was not analysed or examined on the day on which it was received. The report was not prepared on the day when the sample was analysed or examined meaning thereby that the Public Analyst has no personal knowledge as to analysis. In the office of Public Analyst, many samples are received and analysed, and therefore, this may leave a doubt about possibility of a sample and report getting mixed up and this intermingling may result into miscarriage of justice. Therefore, the person who analysed the sample and prepared the report having not been examined the factum of analysis slips under a clouds of doubt. This aspect has been considered by this Court earlier also in the case of Harshavadan Dahyalal Sevak vs. Nareshbhai Devandas Vaghvani, reported in 1991 (2) G.L.H.615, and

therefore, it cannot be said that the learned Magistrate's conclusion of acquitting the accused is erroneous nor can it be said that the judgment and order is illegal, patently erroneous and palpably unsustainable. This court therefore, refuses to entertain this appeal against the acquittal. The appeal is therefore, dismissed.

11-9-98 (A.L.Dave, J.)

(mithabhai)